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Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Letter dated 17 July 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to transmit the summary report of the International Conference on Basic Principles for the Settlement of the Conflicts on the Territories of the GUAM States, held in Baku on 15 and 16 April 2008 (see annex).

I should be grateful if the present letter and report were distributed as a document of the General Assembly, under agenda items 16 and 20.

(*Signed*) Ilgar **Mammadov**
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Annex to the letter dated 17 July 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General

Summary report of the International Conference on Basic Principles for the Settlement of the Conflicts on the Territories of the GUAM States

Baku, 15-16 April 2008

1. Joint efforts of the GUAM States on the settlement of the protracted conflicts on their territories

At the Summit of the Heads of State of the Organization for Democracy and Economic Development — GUAM, held in Kyiv on 22-23 May 2006, a Joint Declaration on the issue of conflict settlement was adopted.[1] This document gives both the political and legal appraisal of the armed conflicts on the territories of some GUAM States, draws attention to the threats to international security and obstacles to sustainable development of these countries caused by the conflicts, and consolidates the principled basis for their settlement.

The Joint Declaration recognizes that unresolved conflicts and illegal military presence on the territories of the Republic of Azerbaijan, Georgia, and the Republic of Moldova undermine the sovereignty, territorial integrity and political independence of these States, impede implementation of full-scale democratic reforms, jeopardize regional security, negatively impact pan-European integration processes and challenge the entire international community.

In this connection the document declares that settlement of the conflicts on the territories of the GUAM States shall be carried out exclusively on the basis of respect for the sovereignty, territorial integrity and inviolability of the internationally recognized borders of the States, and represents one of the priority objectives of cooperation within GUAM.

The document stresses that the territory of a State shall not be the subject of acquisition or military occupation, resulting from the use of force in contravention of the relevant international legal norms. In this regard, according to the Joint Declaration, no territorial acquisition and the resulting self-proclaimed entities shall be recognized as legal under any circumstances whatsoever.

The document reminds about the obligations of States not to intervene in the affairs of any other State and not to exert military, political, economic or any other coercion thereupon.

The GUAM Heads of State underscores the lack of prospects and malignancy of separatism and disintegration, the incompatibility of the use of force and the practice of ethnic cleansing and territorial seizures with the universal and European values, the principles and ideals of peace, democracy, stability and regional cooperation.

[1] For text, see the Compilation of the GUAM Documents (Baku: CBS, 2nd ed., volume I, 2008), pp. 247-249.

The Joint Declaration stresses in this context the importance of consolidation of efforts of the GUAM States and the international community to settle the conflicts by means of re-integration of the "uncontrolled" territories into the States that they are part of, return of forcibly displaced population to the areas of permanent residency and ensuring peaceful coexistence of various ethnic groups within the internationally recognized borders of the States, development of civil society, restoration of destroyed infrastructure on these territories, as well as the use of communications to the benefit of all parties.

The Joint Declaration contains an important conclusion that the status of self-rule for the communities constituting the population of "uncontrolled" territories, which will create the necessary conditions for effective exercise of their rights to equal participation in the conduct of State affairs, including through formation of legitimate regional authorities at all levels, can be determined exclusively within the legal and democratic process.

The Joint Declaration welcomes the efforts of the international community and stresses the importance of providing support to the GUAM States in the development and implementation of a comprehensive and consistent strategy for conflict settlement based on the above mentioned principles, including short and long-term measures aimed at the achievement and maintenance of lasting peace, security and sustainable development.

With the view of consolidating the ideas laid down in the Joint Declaration and to attract attention of the international community to the necessity of soonest resolution of the conflicts on the territories of some GUAM States, an item entitled "Protracted Conflicts in the GUAM area and their Implications for International Peace, Security and Development" was included into the agenda of the United Nations General Assembly, and the draft resolution was submitted for consideration.

2. The course of the Conference

On 15-16 April 2008 the Ministry of Foreign Affairs of the Republic of Azerbaijan, in capacity of the country's chairmanship in the Organization for Democracy and Economic Development — GUAM, convened an International Conference, entitled "Basic principles for the settlement of the conflicts on the territories of the GUAM States".

The Conference gathered the high level representatives and experts of the GUAM States, of the partner countries and other interested States as well as renowned foreign experts in both international law and international relations.

In his opening remarks, H.E. Mr. Elmar Mammadyarov, Minister of Foreign Affairs of the Republic of Azerbaijan, drew the attention of the participants of the Conference to the fact that the process of development and integration among the GUAM States is still burdened by the unresolved conflicts on their territories. He underlined that these conflicts have almost the same origin, similarly developed scenario and dangerous consequences. According to the Minister, "they all started from the manifestation of aggressive separatism, were aimed from the very beginning at seizing the territories by using force and fundamental change of their demographic composition" as well as were accompanied by serious international crimes, such as war crimes, crimes against humanity and genocide.

The Minister of Foreign Affairs of Azerbaijan reminded that the GUAM States had elaborated the joint position on the conflict settlement issue, based on respect for the territorial integrity of the Republic of Azerbaijan, Georgia, and the Republic of Moldova, return of forcibly displaced persons to their homes, providing normal, secure, and equal conditions of life for all communities of the conflict-affected territories, which would allow to build up an effective democratic systems of self-governance therein within the internationally recognized borders of the respective GUAM States.

The officials from Azerbaijan, Georgia, Moldova, Ukraine, Latvia, Lithuania, Poland, Romania, Slovenia, Switzerland, Secretary-General of GUAM Mr. Valeri Chechelashvili, Honorary President of the Parliamentary Assembly of the Council of Europe Mr. Peter Schieder, Chairman of the International Law Commission Mr. Ian Brownlie, representatives of the academic communities of the GUAM States as well as of the leading academic institutions of Austria, Germany, Israel, Russia, Turkey, the United Kingdom and the United States of America delivered speeches in the deliberations of the Conference.[2]

3. The findings of the Conference

During the Conference particular attention was given to discussions of the wide range of issues pertaining to international law, including those relating to correlation between the principles of the territorial integrity of States and the right of people to self-determination, consequences of the illegal use of force and territorial acquisitions, as well as the responsibility for internationally wrongful acts and perspectives of making use of mechanisms of the international judicial institutions to this end.

The Conference has come to the following main conclusions:

- First, after the dissolution of the USSR the international legal doctrine *uti posseditis juris* created a foundation for the international, regional and national legitimation of the borders of the GUAM States. At the same time, the change of sovereignty as a result of the break-up of the USSR and the State succession declared by the former Union Republics were powerless to undermine their existing boundaries which achieved permanence. Accordingly, from the time the GUAM States attained independence their former Soviet administrative borders are recognized as international and thus protected by international law, in particular by the principle of territorial integrity of States. In this regard, attempts taken to legitimize unilateral secession from those States on the eve and in the aftermath of the dissolution of the USSR were not valid and therefore created no legal consequences whatsoever.

- Second, unilateral secession of a part of the territory from the sovereign State does not involve the exercise of any right conferred in international law and hence cannot be associated with the international legal principle of the right of peoples to self-determination, which apply within precisely identified limits. Moreover, self-determination is *a priori* ruled out when it is achieved through the practice of ethnic cleansing and serious international crimes.

[2] For more information about the conference, see Basic Principles for the Settlement of the Conflicts on the Territories of the GUAM States. Materials of the International Conference, Baku, 15-16 April 2008 (Baku: CBS, 2008).

- Third, occupation and violent separatism undermine the right to self-determination of the peoples of the GUAM States, which they exercise on their territories within the internationally recognized borders.

- Fourth, international law does not remain neutral when its peremptory norms are breached in an attempt of unilateral secession. Thus, in case of using force for the acquisition of territory and committing serious international crimes, the international community is under the obligation not to recognize the separatist entity, nor render aid or assistance to maintain the illegal situation.

- Fifth, attempts of unilateral secession accompanied by serious violations of human rights and fundamental freedoms, commission of war crimes, crimes against humanity and genocide entail international legal responsibility.

- Sixth, in regard of serious international crimes committed during the conflicts on the territories of some GUAM States, it was underlined the necessity of redoubling measures aimed at ensuring effective criminal prosecution of those responsible. In this context, it was recommended to explore the possibility of creating *ad hoc* tribunals or special national judicial bodies with international involvement.

- Seventh, as to the conflict between Armenia and Azerbaijan, it was pointed out that there exist well-established facts proving the illegal use of force by Armenia against the territorial integrity of Azerbaijan, and that Armenia in practice exercises overall effective control of the occupied territories of Azerbaijan, whether directly by its own armed forces or indirectly through a subordinate regime which, fulfilling the functions of the local administration, survives by virtue of Armenia's military and other support. Hence, the responsibility of Armenia is a consequence of both the illegal actions of its own authorities, its representatives or entities in the occupied territories and actions of subordinate local administration.

- Finally, the participants of the Conference expressed their solidarity with the efforts of the GUAM States directed at conflict settlement and removing their consequences, and underlined the importance of a development of a comprehensive and consistent strategy aimed at achieving and maintaining lasting peace, security, rule of law and sustainable development.